

### **REMARKS**

Applicant has carefully reviewed and considered the Office Action mailed on May 5, 2005, and the references cited therewith. In the Office Action, claims 88 and 90 were rejected under 35 U.S.C. §112, first paragraph as failing to comply with the written description requirement. Claim 87 was rejected under 35 U.S.C. §112, second paragraph as being indefinite for failing to particularly point out distinctly claim the subject matter regarded to be the invention. Claims 77-85 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,583,548 to Schmid (hereinafter "Schmid"). Claims 77-82, 84 and 88 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,972,196 to Murphy, et al., (hereinafter "Murphy"). Claims 89-90 were then rejected under 35 U.S.C. §103(a) as being unpatentable over Schmid. Claims 86 and 87 were rejected as being unpatentable under 35 U.S.C. §103(a) over Schmid and further in view of any one of U.S. Patent No. 6,007,943 to Coetzer., (hereinafter "Coetzer"), U.S. Patent No. 5,766,789 to James et al., (hereinafter "James") or U.S. Patent No. 4,020,246 to Seo et al., (hereinafter "Seo"). Claims 86-87 were then rejected under 35 U.S.C. §103(a) as being unpatentable over Murphy in further view of any of Coetzer, James, or Seo.

Claims 77-90 are pending in the Application. By this paper, claims 77, 78, 80, 88, and 90 are amended. Applicant respectfully requests reconsideration of the claims as amended above in light of the below arguments.

#### **§112 Rejection of the Claims**

Claims 88 and 90 were rejected under 35 USC §112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claims 88 and 90 were amended above to exclude the language referenced by the Examiner.

Claim 87 was rejected under 35 USC §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. The Examiner based this rejection upon inclusion of

the term "MxO" in claim 87, as also used throughout the specification of the present invention, including, for example, pages 4 and 10. Page 4 of the specification explains that beta alumina materials may include a monovalent or divalent ion substitution such as "Ag, Cu, Li, Rb, Cs, Na, H, Mg, Etc." Specification, p. 4. The term Mx was used in the specification to account for variations both in ion and number of ions substituted since if Na<sup>+</sup> was used, two Na<sup>+</sup> ions would be present, whereas a single divalent Ca<sup>2+</sup> ion could take the place of both, thus resulting in a different formula. This phenomenon is known in the art, as shown in pages from Anthony R. West, *Solid State Chemistry and its Applications*, pp. 29-30 (John Wiley & Sons, 1989), attached hereto as Exhibit A. Applicant thus submits that the term MxO as used in the claim is not vague and indefinite because it was clearly defined in the specification. Applicant respectfully requests that this rejection be withdrawn.

#### §102 Rejection of the Claims

Claims 77-85 were next rejected under 35 USC §102(b) as being anticipated by Schmid. As the Examiner is aware, in order for a reference to anticipate a claim under 35 U.S.C. §102(b), "each and every element as set forth in the claim [must be] found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987), *cited in* MPEP §2131. The MPEP further clarifies that "[t]he identical invention must be shown in as complete detail as is contained in the claim." MPEP §2131, *quoting* *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). Applicant asserts that as amended above, claims 77-85 are not properly anticipated by Schmid and thus respectfully requests that this rejection be withdrawn.

As amended above, claim 77 teaches "[a] device for sanitizing a surface, the device comprising: a solid electrolyte conductor including an anode, a cathode, and a unitary electrolyte component." The Examiner cites Schmid as teaching "disinfecting a skin surface utilizing a device having a halide-containing, solid electrolyte contained in a housing for placement against the skin and powered to generate sanitizing ozone." Office Action, p. 3. Applicant respectfully notes that Schmid does not discuss generation

of ozone. The "electrode arrangement" taught in Schmid requires that the electrolyte take the form of either a separately-applied electrolyte gel (reference no.: 87, Figure 4), a set of two electrolyte layers (as shown in Figure 2), or an integrated electrolyte layer (see reference Nos.: 9 (Figure 1), 59, 69 (Figure 3)) used in combination with a separately-applied electrolyte gel. In contrast, Applicant's invention, as currently claimed, uses a unitary electrolyte component, as illustrated in Figure 7. Since Schmid teaches every element of the claims as presented herein, Applicant respectfully requests withdrawal of this rejection.

Claims 77-82, 84, and 88 were rejected under 35 U.S.C. §102(b) as being anticipated by Murphy. As with Schmid above, Murphy similarly fails to teach each and every element of the claims of the present invention, and thus, does not support a rejection under 35 U.S.C. §102(b), and should thus be withdrawn. The Examiner asserts Murphy as "production of ozone for surface sterilization of items such as medical and dental instruments." As currently pending, claim 77 and all claims pending therefrom teach the provision of "a housing operably connected to the solid electrolyte conductor wherein the housing is configured for placement of the solid electrolyte conductor adjacent the surface" intended to be sanitized. The Examiner explains that Murphy teaches "directing the generated ozone to the surface to be treated." This differs structurally from what is taught in the pending claims. Murphy itself further emphasizes that its focus is on providing "pressurized, humidified, and concentrated ozone" for sanitizing methods instead of providing a device suitable for providing an apparatus that places a solid electrolyte conductor adjacent the surface to be sanitized, as taught in claim 77. See, e.g., Murphy, Abstract. As a result, Murphy fails to anticipate each and every element of the claims as amended above, and is thus insufficient to support a rejection under 35 U.S.C. §102(b).

#### '103 Rejection of the Claims

Claims 89-90 and 86-87 were rejected under 35 USC §103(a) as being unpatentable over Schmid, and in view of Schmid or Murphy in view of any one of U.S. Patent No.: 6,007,943, to Coetzer, U.S. Patent No.: 5,766,789 to James et al., or U.S.

Patent No.: 4,020,246 to Seo et al. The MPEP explains that there are "three basic criteria" which "must be met" to establish a prima facie case of obviousness:

First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure.

MPEP 2142, citing *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). In the absence of any of these, an obviousness rejection is improper. Applicant asserts that in light of these amendments and the arguments presented above since neither Schmid nor Murphy teaches each and every element of the claims, Schmid alone or the combination of Schmid or Murphy with Coetzer, James, or Seo also fails to teach every element of the claims. As a result, Applicant respectfully requests withdrawal of this rejection.

Conclusion

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney (801-978-2186) to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 50-3586.

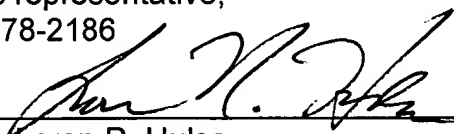
Respectfully submitted,

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801-978-2186

Date

Nov 7, 2005

By

  
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